

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**CORRECTED  
FISCAL NOTE**

**SB 1534 - HB 1990**

March 24, 2011

**SUMMARY OF BILL:** Prohibits removal of non-exempt products containing an immediate methamphetamine precursor that must be kept behind the pharmacy counter pursuant to Tenn. Code Ann. § 39-17-431(e) from the schedule of dangerous drugs.

**ESTIMATED FISCAL IMPACT:**

On March 17, 2011, a fiscal note was issued estimating a fiscal impact as follows:

*Decrease State Revenue – Net Impact – \$712,000*

*Decrease Local Revenue – Net Impact – \$231,100*

*Potential Impact on Health Insurance Premiums (required by Tenn. Code Ann. § 3-2-111): Such legislation would not result in a significant increase in the cost of health insurance premiums. Should these current over-the-counter drugs become available by prescription only, it is assumed that any changes to health plan drug formularies will not result in a significant increase in expenses by the plans to cover the costs of these drugs.*

Due to an oversight regarding the effective date of the proposed legislation, this impact was in error. After correcting for this error, the estimated impact is:

**(CORRECTED)**

**Decrease State Revenue – Net Impact – \$712,000/FY12-13 and Subsequent Years**

**Decrease Local Revenue – Net Impact – \$231,100/FY12-13 and Subsequent Years**

**Potential Impact on Health Insurance Premiums (required by Tenn. Code Ann. § 3-2-111): Such legislation would not result in a significant increase in the cost of health insurance premiums. Should these current over-the-counter drugs become available by prescription only, it is assumed that any changes to health plan drug formularies will not result in a significant increase in expenses by the plans to cover the costs of these drugs.**

**SB 1534 - HB 1990 (CORRECTED)**

Assumptions:

- Under current law, the Commissioner of Mental Health is authorized to exclude any non narcotic substance from a schedule if the substance may, under the Federal Food, Drugs, and Cosmetic Act, and the laws of this state, be lawfully sold over the counter without a prescription. Under the proposed legislation, non-exempt products containing an immediate methamphetamine precursor are exempt from this exclusion and could become scheduled substances.
- Insurance plans, including the state sponsored public sector plans and the Cover Tennessee plans generally do not provide benefits for over-the-counter (OTC) medications. Prescription medicine is generally covered through a plan's drug formulary. If these current OTC medications become available through a prescription only, the state sponsored public sector plans and the Cover Tennessee Plans would have to incorporate these prescriptions into their formulary. Should the state do so, it would not result in a significant increase in expenditures for any of the plans.
- According to the Bureau of TennCare, any products containing an immediate methamphetamine precursor obtained with a prescription will not be covered under the TennCare program on the basis that such drugs are not medically necessary as there are other effective OTC substitutes.
- Prescription drug purchases are exempt from sales tax while OTC products are sales-taxable. Sales tax revenues would decrease as a result of changing the status of such product from OTC to prescription only.
- Data published by the Consumer Healthcare Products Association indicate that U.S. expenditures on methamphetamine precursors (pseudoephedrine) are approximately \$550,000,000 annually.
- According to the U.S. Census, the estimated population in Tennessee during 2009 was 6,296,254; the estimated population for the United States is currently 308,745,538. Therefore, the population in Tennessee is approximately 2.04 percent of the national population ( $6,296,254 / 308,745,538$ ).
- Tennessee accounts for 2.04 percent of the national market for methamphetamine precursors, the equivalent of \$11,220,000 in statewide sales ( $\$550,000,000 \times 2.04\%$ ).
- A state sales tax rate of 7.0 percent and a local option sales tax rate of 2.5 percent.
- The decrease in state sales tax revenue will be \$785,400 ( $\$11,220,000 \times 7.0\%$ ).
- The decrease in local option sales tax revenue will be \$280,500 ( $\$11,220,000 \times 2.5\%$ ).
- Total tax savings to consumers will be \$1,065,900 ( $\$785,400 + \$280,500$ ).
- Fifty percent of tax savings will be spent in the economy on other sales-taxable goods and services.
- Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(A), local governments receive 4.5925 percent of all state sales tax revenue as state-shared sales tax revenue.
- The net decrease in state revenue will be \$712,024 [ $\$785,400 - (\$785,400 \times 4.5925\%) - (\$1,065,900 \times 50.0\% \times 7.0\%)$ ].
- The net decrease in local government revenue will be \$231,107 [ $\$280,500 - (\$785,400 \times 4.5925\%) - (\$1,065,900 \times 50.0\% \times 2.5\%)$ ].

- The proposed legislation will take effect July 1, 2012. As a result, any impact on state revenue or expenditures will be reflected in FY12-13 and subsequent years.
- The Board of Pharmacy will ensure that prescriptions for non-exempt products containing an immediate methamphetamine precursor are reported to the Controlled Substance Monitoring Database. Rulemaking and any additional duties imposed by this bill on the Department of Health can be accommodated within existing resources without an increased appropriation or reduced reversion.
- Pursuant to Tenn. Code Ann. § 4-3-1011, all health-related boards are required to be self-supporting over a two-year period. As of June 30, 2010, the Board had a balance of \$276,649.24.
- A small increase in cases in the court system, which will result in additional state and local government expenditures for processing the cases and additional state and local government revenue from fees, taxes and costs collected. These expenditures and revenue are estimated to be not significant.
- Private health insurance impact: Most health insurance carriers do not provide coverage for OTC drugs. If these drugs become available through prescriptions only, it is assumed that health insurance plans will incorporate these prescriptions in the plans' formulary. Due to the inexpensive nature of these drugs, should plans choose to cover them, there will not be a significant increase to health insurance premiums to cover the costs of such drugs.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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